

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 994 Session of 2023

INTRODUCED BY CAPPELLETTI, SAVAL, BREWSTER, FONTANA, KEARNEY,
HUGHES, KANE, COLLETT, COSTA AND STREET, DECEMBER 8, 2023

REFERRED TO JUDICIARY, DECEMBER 8, 2023

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, in general administration, further
3 providing for State recording system for application of
4 restraints to pregnant prisoners or detainees; in county
5 correctional institutions, further providing for county
6 recording system for application of restraints to pregnant
7 prisoners or detainees; and, in miscellaneous provisions,
8 further providing for healthy birth for incarcerated women.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Sections 1104, 1758 heading, (a) and (b)(1) and
12 5905 of Title 61 of the Pennsylvania Consolidated Statutes are
13 amended to read:

14 § 1104. State recording system for application of restraints to
15 pregnant, laboring or postpartum prisoners or
16 detainees.

17 (a) General rule.--[A correctional institution as defined by
18 section 5905(e) (relating to healthy birth for incarcerated
19 women) shall report each restraint applied to a pregnant
20 prisoner or detainee. The report must be in writing and must
21 note the number of restraints. Individual, separate written

1 findings for each restraint must accompany the report. This
2 shall include reports from the following:] Each custodian who
3 applies restraints to a pregnant, laboring or postpartum
4 prisoner or detainee shall, on a form prepared by the
5 department, submit a written report of the application of
6 restraints to a staff person appointed by the officer in charge
7 of a correctional institution within two days of use of the
8 restraint on a pregnant, laboring or postpartum prisoner or
9 detainee. The staff person appointed under this section shall
10 deliver each written report of the use of restraints to the
11 officer in charge within two days of receiving the report under
12 this section. The officer in charge shall deliver the reports in
13 the following manner:

14 (1) [A] The officer in charge of a correctional
15 institution that is not operated, supervised or licensed by
16 the Department of [Public Welfare pursuant to] Human Services
17 under the act of June 13, 1967 (P.L.31, No.21), known as the
18 [Public Welfare] Human Services Code, shall [make the report]
19 deliver the reports on a monthly basis to the secretary
20 within 30 days of the end of the previous month.

21 (2) [A] The officer in charge of a correctional
22 institution that is operated, supervised or licensed by the
23 Department of [Public Welfare pursuant to] Human Services
24 under the [Public Welfare] Human Services Code shall [make
25 the report] deliver the reports on a monthly basis to the
26 Secretary of [Public Welfare] Human Services within 30 days
27 of the end of the previous month.

28 (b) Contents of written [findings] reports.--Written
29 [findings of each restraint as] reports required under
30 subsection (a) must include the following[:

1 (1) the circumstances that led to the determination that
2 the prisoner or detainee represented a substantial risk of
3 imminent flight; or

4 (2) the circumstances that led to the determination that
5 other extraordinary medical or security circumstances
6 dictated the prisoner or detainee be restrained to ensure the
7 safety and security of the prisoner or detainee, the staff of
8 the correctional institution or medical facility, other
9 prisoners or detainees or the public.]

10 for each restraint applied:

11 (1) the date and time restraints were applied and
12 removed;

13 (2) the number and type of restraints applied;

14 (3) the name of the prisoner or detainee on which
15 restraints were applied;

16 (4) the gestational period of the pregnant prisoner or
17 detainee;

18 (5) the name of the correctional institution of the
19 prisoner or detainee;

20 (6) the name of the staff member who applied the
21 restraints; and

22 (7) the staff member's justification for the
23 individualized determination to use restraints, including the
24 underlying facts that led to the determination:

25 (i) that the prisoner or detainee represented a
26 substantial risk of imminent flight that could not be
27 reasonably prevented by other means; or

28 (ii) that the prisoner or detainee posed an
29 extraordinary, immediate and serious threat to
30 themselves, the staff of the correctional institution or

1 medical or other facility, other prisoners or detainees
2 or the public.

3 (c) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection unless the context clearly indicates otherwise:

6 "Correctional institution." As defined in section 5905(e)
7 (relating to healthy birth for incarcerated prisoners and
8 detainees).

9 "Custodian." As defined in section 5905(e).

10 "Officer in charge." As defined in section 5905(e).

11 § 1758. County recording system for application of restraints
12 to pregnant, laboring or postpartum prisoners or
13 detainees.

14 (a) General rule.--The application of restraints to a
15 pregnant, laboring or postpartum prisoner or detainee [occurring
16 pursuant] subject to section 5905 (relating to healthy birth for
17 incarcerated [women] prisoners and detainees) shall constitute
18 an incident that qualifies as an extraordinary occurrence that
19 must be reported to the department in the County Extraordinary
20 Occurrence Monthly Report. The provisions of this subsection
21 shall apply to county constables, police, sheriffs or other law
22 enforcement personnel.

23 (b) Information to be included in County Extraordinary
24 Occurrence Monthly Report.--

25 (1) Any and all incidents where the application of
26 restraints to a pregnant, laboring or postpartum prisoner or
27 detainee [pursuant] subject to section 5905 occurred must be
28 included in the County Extraordinary Occurrence Monthly
29 Report that is submitted to the department. [An indication of
30 the incidents must be noted on the designated report form or

1 other available approved method, if applicable, and
2 individual, separate written findings must accompany the form
3 for each incident that occurred.] The report must include the
4 following for each restraint applied:

5 (i) the date and time restraints were applied and
6 removed;

7 (ii) the number and type of restraints applied;

8 (iii) the name of the prisoner or detainee on which
9 restraints were applied;

10 (iv) the gestational period of the pregnant prisoner
11 or detainee;

12 (v) the name of the correctional institution of the
13 prisoner or detainee;

14 (vi) the name of the staff member who applied the
15 restraints; and

16 (vii) the staff member's justification for the
17 individualized determination to use restraints, including
18 the underlying facts that led to the determination:

19 (A) that the prisoner or detainee represented a
20 substantial risk of imminent flight that cannot be
21 reasonably prevented by other means; or

22 (B) that the prisoner or detainee posed an
23 extraordinary, immediate and serious threat to
24 themselves, the staff of the correctional institution
25 or medical or other facility, other prisoners or
26 detainees or the public.

27 * * *

28 § 5905. Healthy birth for incarcerated [women] prisoners and
29 detainees.

30 (a) Duties of correctional institution.--[Consistent with

1 established policy and practice, it] It shall be the duty and
2 responsibility of the correctional institution and officers in
3 charge to:

4 (1) provide adequate personnel to monitor [the] and
5 promptly address the medical needs of a pregnant prisoner or
6 detainee;

7 (i) in the correctional institution;

8 (ii) during transport to and from [the] a medical
9 facility, court or other location; and

10 (iii) during [her] a pregnant prisoner or detainee's
11 stay at [the] a medical facility[.], court or other
12 location;

13 (2) provide annual training on the requirements of this
14 section to all personnel who will monitor pregnant prisoners
15 or detainees, including training consistent with the
16 guidelines developed by the Department of Human Services in
17 consultation with health care professionals with expertise in
18 pregnancy and postpartum recovery, which shall include:

19 (i) the general care of a pregnant individual;

20 (ii) the impact of restraints on a pregnant
21 individual and fetus;

22 (iii) how to identify certain symptoms of pregnancy
23 and postpartum complications that require immediate
24 referral to a health care professional;

25 (iv) the restrictions on use of restraints on
26 pregnant prisoners and detainees;

27 (v) circumstances under which the exceptions under
28 subsection (b) (2) would apply;

29 (vi) in the case that an exception under subsection
30 (b) (2) applies, how to apply restraints in a way that

1 does not harm the prisoner, detainee or fetus;

2 (vii) the requirements to report and the information
3 required to be reported under sections 1104(b) (relating
4 to State recording system for application of restraints
5 to pregnant, laboring or postpartum prisoners or
6 detainees), 1758(b) (relating to county recording system
7 for application of restraints to pregnant, laboring or
8 postpartum prisoners or detainees) and subsection (b)
9 (2.1); and

10 (viii) the right of a health care professional to
11 request that restraints not be used and the requirements
12 under subsection (c.1) to comply with such a request;

13 (3) adopt and implement a written policy consistent with
14 and reiterating the requirements of sections 1104, 1758 and
15 this section; and

16 (4) prepare and distribute written information to
17 pregnant and potentially pregnant prisoners and detainees
18 explaining their rights under this section, provided that
19 this obligation shall be satisfied by distribution of a fact
20 sheet prepared by the department or the Department of Human
21 Services that accurately specifies the requirements of this
22 section.

23 (b) Restraint of pregnant, laboring and postpartum prisoners
24 and detainees.--

25 (1) Unless provided in paragraph (2), a correctional
26 institution and its personnel shall not apply restraints to a
27 prisoner or detainee known to be pregnant [during any stage
28 of labor, any pregnancy-related medical distress, any period
29 of delivery, any period of postpartum as defined in
30 subsection (e) or transport to a medical facility as a result

1 of any of the preceding conditions or transport to a medical
2 facility after the beginning of the second trimester of
3 pregnancy.], laboring or postpartum within the correctional
4 institution's facilities or during transport to or a stay at
5 a medical facility, court or other location. A prisoner or
6 detainee is known to be pregnant, laboring or postpartum on
7 the earliest date on which the custodian:

8 (i) receives medical confirmation of a prisoner or
9 detainee's status of being pregnant, laboring or
10 postpartum;

11 (ii) sees that a prisoner or detainee is visibly
12 pregnant, laboring or postpartum; or

13 (iii) has received a credible report of the prisoner
14 or detainee's status of being pregnant, laboring or
15 postpartum or of the prisoner or detainee's symptoms of
16 being pregnant, laboring or postpartum, including a
17 report from the prisoner or detainee.

18 (2) [Paragraph] Except as provided in paragraph (4) and
19 subsections (c) and (c.1), paragraph (1) shall not bar
20 reasonable restraint provided:

21 (i) the custodian or correctional institution staff
22 assigned to the prisoner or detainee makes an
23 individualized determination that the prisoner or
24 detainee presents a substantial risk of imminent flight
25 [or some other extraordinary medical or security
26 circumstance dictates that the prisoner or detainee be
27 restrained to ensure the safety and security of the
28 prisoner or detainee,] that cannot be reasonably
29 prevented by other means or poses an extraordinary,
30 immediate and serious threat to themselves, the staff of

1 the correctional institution or medical or other
2 facility, other prisoners or detainees or the public[.
3 The assigned correctional institution staff shall report
4 the incident to the correctional institution in a
5 reasonable amount of time after the restraint occurs. If
6 the assigned correctional institution staff is not
7 employed by the correctional institution, then the
8 assigned correctional institution staff shall report the
9 restraint to the correctional institution in a reasonable
10 amount of time after the incident occurs.]; and

11 (ii) except when prevented from doing so due to
12 exigent circumstances, the officer in charge approves the
13 use of the restraint.

14 (2.1) Whenever a prisoner or detainee is restrained
15 under paragraph (2), including in the event of exigent
16 circumstances, the assigned correctional institution staff or
17 other custodian shall report the incident to the correctional
18 institution staff assigned to receive the reports within two
19 days after the restraint occurs, on a form prepared by the
20 department for this purpose. The assigned staff person shall
21 deliver the written report to the officer in charge within
22 two days of receiving the report. This paragraph shall apply
23 even if the assigned custodian or correctional institution
24 staff is not employed by the correctional institution.

25 (3) If restraint is applied under paragraph (2), at no
26 time shall the prisoner or detainee be left unattended by a
27 correctional institution staff with the ability to release
28 the restraint should a release become medically necessary.
29 The correctional institution staff under this paragraph shall
30 be female if practicable and preferred by the prisoner or

1 detainee. Correctional institutional staff may not be present
2 in the room during the prisoner's or detainee's examination,
3 labor, delivery or childbirth unless specifically requested
4 by medical personnel.

5 (4) [When a] A restraint is permitted under [this
6 section, a correctional institution shall use] paragraph (2)
7 only if the restraint is the least restrictive [restraint
8 necessary when the facility has actual or constructive
9 knowledge that a prisoner or detainee is in the second or
10 third trimester of pregnancy] method available.

11 (c) Restraints.--The following [shall apply to a prisoner or
12 detainee who has been restrained under this subsection:

13 (1) The correctional institution staff accompanying the
14 prisoner or detainee shall immediately remove all restraints
15 upon request of a doctor, nurse or other health care
16 professional.

17 (2) Leg or waist restraints shall not be used on any
18 prisoner or detainee who is in labor.

19 (3) The type of restraint applied and the application of
20 the restraint shall be done in the least restrictive manner
21 possible.] restraints may not be used on a prisoner or
22 detainee at any time during pregnancy, labor or postpartum
23 period:

24 (1) abdomen, ankle, leg or waist restraints;

25 (2) restraint of the hands behind the back;

26 (3) four-point restraints;

27 (4) restraints attaching the prisoner or detainee to
28 another prisoner or detainee; or

29 (5) tasers and stun guns.

30 (c.1) Medical request.--Notwithstanding subsection (b) (2),

1 on the request of a health care professional who is responsible
2 for the health and safety of a prisoner or detainee, a
3 correctional institution official or other custodian, as
4 applicable, shall refrain from using restraints on the prisoner
5 or detainee or shall immediately remove all restraints.

6 (c.2) Duties of officer in charge.--The officer in charge
7 shall:

8 (1) review and assess the appropriateness of the use of
9 restraints under this section and shall provide an assessment
10 to the custodian who used restraints;

11 (2) maintain reports of the use of restraints under this
12 section for a minimum of five years; and

13 (3) deliver reports of the use of restraints under this
14 section to the secretary or the Secretary of Human Services
15 consistent with section 1104(a).

16 (d) Annual report.--No later than August 1 of each year, the
17 secretary and the Secretary of [Public Welfare] Human Services
18 shall each submit to the Governor's Office a written report
19 containing information regarding the use of restraints on any
20 pregnant, laboring or postpartum prisoner or detainee during the
21 preceding fiscal year [specifically identifying and enumerating
22 the circumstances that led to the determination that the
23 prisoner or detainee fell under the exception in subsection (b)
24 (2).]. The following shall apply:

25 (1) For each restraint, the following information shall
26 be included:

27 (i) the date and time restraints were applied and
28 removed;

29 (ii) the number and type of restraints applied;

30 (iii) the name of the correctional institution of

1 the prisoner or detainee;

2 (iv) the job title and employer of the staff person
3 who applied the restraints; and

4 (v) the staff member's justification for the
5 individualized determination to use restraints, including
6 the particular factual circumstances that support a
7 determination that the prisoner or detainee fell under
8 the exception in subsection (b) (2).

9 (2) The secretary shall report on pregnant prisoners or
10 detainees in the custody of correctional institutions
11 operated, supervised or licensed by the department. If a
12 correctional institution fails to submit a report of
13 restraints used on pregnant, laboring or postpartum prisoners
14 or detainees during the preceding fiscal year, the secretary
15 shall:

16 (i) obtain a certification from the correctional
17 institution that the correctional institution did not use
18 any restraints on any pregnant, laboring or postpartum
19 prisoner or detainee during the preceding fiscal year;
20 and

21 (ii) include the certification under subparagraph
22 (i) in the secretary's report.

23 (3) The Secretary of [Public Welfare] Human Services
24 shall report on pregnant prisoners or detainees in the
25 custody of correctional institutions operated, supervised or
26 licensed by the Department of [Public Welfare pursuant to]
27 Human Services under the act of June 13, 1967 (P.L.31,
28 No.21), known as the [Public Welfare] Human Services Code.

29 [The reports] If a correctional institution does not submit a
30 report of restraints used on pregnant, laboring or postpartum

1 prisoners or detainees during the preceding fiscal year, the
2 Secretary of Human Services shall:

3 (i) obtain a certification from the correctional
4 institution that the correctional institution did not use
5 restraints on a pregnant, laboring or postpartum prisoner
6 or detainee during the preceding fiscal year; and

7 (ii) include the certification in the Secretary of
8 Human Services' report.

9 (4) The annual reports submitted under this subsection
10 shall not contain any identifying information of any prisoner
11 or detainee.

12 (5) The annual reports submitted under this subsection
13 shall be posted on the [Governor's] department's publicly
14 accessible Internet website and shall be made available for
15 public inspection at the offices of the department and the
16 Department of [Public Welfare] Human Services, respectively.

17 (d.1) Oversight.--

18 (1) In addition to the department's inspection powers
19 and duties under section 1105(a)(2) (relating to powers and
20 duties of department), the department shall have the power
21 and duty to inspect county correctional institutions'
22 fulfillment of the requirements of this section.

23 (2) Consistent with section 402 of the act of April 9,
24 1929 (P.L.343, No.176), known as The Fiscal Code, the
25 Department of the Auditor General shall have the authority to
26 make a special audit of the department's affairs under this
27 section.

28 (e) Definitions.--As used in this section, the following
29 words and phrases shall have the meanings given to them in this
30 subsection unless the context clearly indicates otherwise:

1 "Correctional institution." Any entity under the authority
2 of the state or any county or municipality that has the power to
3 detain and restrain a person under the laws of this
4 Commonwealth[.], including, but not limited to, State
5 correctional institutions, county correctional institutions,
6 juvenile detention facilities, police departments, constables'
7 offices, sheriff's offices and private entities performing
8 contracts for the State, county or municipality.

9 "Custodian." A warden, sheriff, jailer, deputy sheriff,
10 police officer or other correctional or law enforcement officer
11 having actual custody of a pregnant, laboring or postpartum
12 prisoner or detainee.

13 "Detainee." Includes any person detained under the
14 immigration laws of the United States at any correctional
15 facility.

16 "Labor." The period of time before a birth during which
17 contractions [are of sufficient frequency, intensity and
18 duration to bring about effacement and progressive dilation of
19 the cervix. The determination of when labor has commenced shall
20 rest solely with the medical providers of the prisoner or
21 detainee.] commence, followed by delivery of the child and
22 placenta.

23 "Officer in charge." The warden, captain, superintendent or
24 other individual who is responsible for the supervision of a
25 correctional institution or of another custodian.

26 "Postpartum." The period of eight weeks following [delivery
27 before a prisoner or detainee has been discharged from a medical
28 facility] labor.

29 "Prisoner." Any person incarcerated or detained in any
30 correctional institution who is accused of, convicted of,

1 sentenced for or adjudicated delinquent for violations of
2 criminal law or the terms and conditions of parole, probation,
3 pretrial release or a diversionary program.

4 "Restraint." Any physical hold [or mechanical] device or
5 chemical used to control the movement of a prisoner's or
6 detainee's body and limbs, including, but not limited to,
7 shackles, flex cuffs, soft restraints, hard metal handcuffs, a
8 black box, Chubb cuffs, leg irons, belly chains, a security
9 (tether) chain [or], a convex shield or drug or medication.

10 Section 2. This act shall take effect in 60 days.